

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

JOSE DAVILA-ACOSTA
and
JULIA M. DAVILA

Claim No. CU -0601

Decision No. CU 4305

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JOSE DAVILA-ACOSTA and JULIA M. DAVILA for \$29,725.00 based upon the asserted ownership and loss of real and personal property in Cuba. Claimants have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimants describe their loss as follows:

(1) 4-1/2 acres of land	\$4,000.00
(2) Improvements thereto, including warehouse, irrigation, trees, etc.	4,250.00
(3) House	8,500.00
(4) Furniture and personalty	2,000.00
(5) Equipment for manufacture of tiles	3,600.00
(6) Deep well drilling equipment	2,500.00
(7) 10 acres of land	1,000.00
(8) Improvements such as clearing, fencing	3,875.00

Based upon the entire record, including copies of deeds, affidavits of claimants and others having knowledge of the facts, the Commission finds that claimants jointly owned the items of property listed above.

The Agrarian Reform Law of May 17, 1959, published in the Cuban Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties. Regulations for carrying out such expropriations were contained in Law 588, published in the Official Gazette (No. 191) on October 7, 1959.

On December 6, 1961, the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

Based on the foregoing and the evidence of record, the Commission finds that claimants' properties listed in (5) and (6) above, were taken by the Government of Cuba pursuant to the provisions of the Agrarian Reform Law, and, in the absence of evidence to the contrary, that the taking occurred on October 7, 1959, the date on which Law 588 was published in the Cuban Gazette. (See Claim of Council Bluffs Savings Bank, Trustee, Estate of Grenville M. Dodge, Deceased, Claim No. CU-1290.)

The Commission further finds, in the absence of evidence to the contrary, that the remainder of claimants' property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 ECSC Semiann. Rep. 53 [July-Dec. 1966].)

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The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The record includes, in support of the claimed values, claimants' affidavit of February 11, 1963; copies of deeds concerning items (1) and (7); an affidavit of Edwin R. Greenfield concerning loans to claimants for purpose of purchasing and improving their properties on the Isle of Pines, Cuba; and a bank passbook reflecting the investment of funds.

Claimants' properties had the following values on the dates of loss, appropriately depreciated where applicable:

<u>Item</u>	<u>Value</u>	<u>Date of Loss</u>
Equipment for making tiles, and drilling	\$ 5,490.00	October 7, 1959
4 1/2 acres and trees	\$ 4,250.00	
House, warehouse and related improvements	12,000.00	
Furnishings and personal items	1,755.00	
10 acres of land	1,000.00	
Improvements	<u>3,800.00</u>	
	<u>22,805.00</u>	December 6, 1961
	\$28,295.00	

Accordingly, the Commission concludes that claimants suffered losses in the amounts found within the meaning of Title V of the Act, as the result of the taking of their property by the Government of Cuba on the aforementioned dates.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that JOSE DAVILA-ACOSTA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fourteen Thousand One Hundred Forty-seven Dollars and Fifty Cents (\$14,147.50) with interest at 6% per annum from the aforesaid dates to the date of settlement; and

The Commission certifies that JULIA M. DAVILA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fourteen Thousand One Hundred Forty-seven Dollars and Fifty Cents (\$14,147.50) with interest at 6% per annum from the aforesaid dates to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

DEC 10 1989

Theodore Jaffe

Theodore Jaffe, Commissioner

Stanley J. Zolberg

Stanley J. Zolberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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